

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 99-4165

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United States of America,

Appellee,

v.

Ai Minh Le, also known as Minh Ai  
Le, also known as Ai Le, also known  
as Minh Le, also known as Lee Ai  
Minh,

Appellant.

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\* Appeal from the United States  
\* District Court for the  
\* District of Nebraska.

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\* **[UNPUBLISHED]**  
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Submitted: July 26, 2000  
Filed: August 1, 2000

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Before LOKEN, FAGG, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

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PER CURIAM.

Ai Minh Le appeals the sentence the district court<sup>1</sup> imposed on him following his guilty plea to drug trafficking, in violation of 21 U.S.C. § 841(a)(1). On appeal, counsel moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), filing a brief in which he raises the issue whether the district court erred in failing to

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<sup>1</sup>The HONORABLE RICHARD G. KOPF, Chief Judge, United States District Court for the District of Nebraska.

depart downward based upon Le's childhood, personal history, and diminished capacity. Le has not filed a pro se supplemental brief.

Having carefully reviewed the record, we conclude the district court did not err in sentencing Le within the applicable Guidelines range, as he never moved for departure and the court was not required to depart sua sponte. See United States v. Montanye, 996 F.2d 190, 192 (8th Cir. 1993) (en banc) (standard of review for issues not raised in district court is plain error); United States v. Tapia, No. 99-2412, 2000 WL 146374, at \*1 (8th Cir. Feb. 8, 2000) (unpublished per curiam) (district court did not plainly err in not granting unrequested downward departure).

In accordance with Penson v. Ohio, 488 U.S. 75 (1988), we have reviewed the record for any non-frivolous issues and have found none.

Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.